

REMARKS

Claims 3, 10 and 17 are pending in the present application. Of these, Claims 3, 10 and 17 are independent. No Claims have been amended. Claims 1-2, 4-9 and 11-16 were previously cancelled. Reconsideration and allowance of the claims is respectfully requested.

Petition to Revive for Unintentional Abandonment

Applicant has submitted with this Response a Petition for Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b).

35 USC 103 Rejection

Claims 3, 10, and 17 stand rejected under 35 USC 103(a) as being unpatentable over Xue et al. (Patent No. 6,782,414 B1) (“Xue”) in view of Shono et al. (Pub. No. 20030084110 A1) (“Shono”). Applicants respectfully traverse this rejection, and the assertions and determinations therein, for at least the following reasons.

Applicants respectfully submit that Xue is not applicable as prior art against the present application. The present application was filed on July 17, 2003, and Xue was issued on Aug. 24, 2004, and filed on Aug. 3, 2000. Thus, Xue is only applicable to the present invention via 35 USC 102(e) since the Examiner must rely on the filing date of Xue, since the issue date of Xue is after the filing date of the present application. Xue is assigned to IBM, and, thus, both Xue and the present application, which is also assigned to IBM (see assignment to IBM at reel/frame 014319/0196), are under an obligation to assign to the same entity. Under 35 USC 103(c)(1), 102(e) art is unavailable against the present application. Thus, Applicants respectfully request withdrawal of the combination of Xue and Shono, and withdrawal of the Xue reference because Xue is not prior art against the present application. With respect to the elements of Claim 3 that the Office Action relied upon Xue to teach or suggest, Shono does not teach or suggest these elements of Claim 3, nor is Shono relied up on with respect to these elements. Thus, Applicants respectfully submit that Claim 3 is patentable over Shono and that Xue is not

an applicable reference. Therefore, Applicants respectfully request allowance of independent Claim 3.

Applicants respectfully submit that independent Claims 10 and 17 are patentable for reasons analogous to those discussed above in association with Claim 3. Therefore, Applicants respectfully request allowance of independent Claims 10 and 17.

CONCLUSION

Having now responded to each rejection set forth in the present Office Action, Applicant respectfully submits that all claims now pending are in condition for allowance and respectfully requests such allowance.

The 3-month shortened statutory period for Response to the current Official Action expired on February 10, 2009. As Applicants have separately filed a Petition for Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b) it is believed that no other fees are due with the filing of this Response. However, should any additional fees be due, or any overpayments to be repaid, the Commissioner is hereby authorized to charge or repay such fees to the deposit account of IBM Corporation, Deposit Account No. 09-0447.

Respectfully submitted,

DATE: November 10, 2009

/Matthew B. Talpis/

Matthew B. Talpis
Reg. No. 45,152
IBM INTELLECTUAL PROPERTY LAW
11400 Burnet Road
Austin, Texas 78758
(512) 286-8820
ATTORNEY FOR APPLICANTS